

**OPINION**  
**65-455**

October 22, 1965 (OPINION)

Mr. Kenneth E. Raschke, Commissioner

Higher Education

RE: Veterans - Free Tuition of Children - Scholarship Necessary

This is in reply to your letter of October 13, 1965, in which you make inquiry relative to the interpretation of section 37-20-01 of the North Dakota Century Code.

You note this section provides for scholarship payments to deceased veterans' children. You further note these scholarships have not been granted for many years because no funds have been available for this purpose, nor are any funds presently available for the granting of the scholarships.

You request an opinion from this office involving the interpretation of this statute in regard to the following questions:

- (1) Is it the intent of this chapter and section that the children of the deceased veterans be given free tuition only if a scholarship grant is made to this child?
- (2) Is it the intent of this law that any child of a deceased veteran be granted free tuition regardless of the scholarship grant?
- (3) Is it the intent of this law that the scholarship grant shall be given only if the child is admitted to a state institution free of tuition?
- (4) Does this section apply only to veterans who were North Dakota residents at the time they entered the service?
- (5) Does this section apply to students who at the time of their registration are nonresident students or who become nonresident students at some time after their admittance to an institution, even though the parent was a North Dakota resident at the time of entrance into the service:"

Section 37-20-01 of the North Dakota Century Code provides:

WHO ELIGIBLE FOR SCHOLARSHIPS - AMOUNTS - USE. The sum of two hundred dollars per year shall be made available for any child of a deceased veteran of World War I or II between the ages of sixteen years and twenty-one years, whose father or mother was killed in action or died from wounds or other causes during the period of the war in which he or she served, who died or was declared wholly incompetent thereafter of service connected disability, who desires to attend the state university, state

agricultural college, any state normal school or teachers college or any state trade school or junior college and who is unable to attend such institution, school or junior college without such financial assistance. The financial aid herein provided shall be used for the sole purpose of contributing to the payment of tuition, board, room rent, books and supplies; provided that the child of a deceased veteran shall be admitted to any educational institution maintained by this state free of tuition."

The statute is not entirely clear as to whether the children of deceased veterans are to be given free tuition only if a scholarship grant under the provisions of chapter 37-20 is made, or if the children of all deceased veterans are to be given free tuition. We note that the statute is concerned primarily with scholarships. Chapter 37-20 was enacted as chapter 156 of the 1947 Session Laws. The title to the Act reads as follows:

SCHOLARSHIPS ORPHANS WORLD WAR I AND II VETERANS. An ACT providing for scholarships in any State Educational Institution or in any Junior College in this State for orphans of World War I or II Veterans who are unable to attend any such institution or college without financial assistance; prescribing the duties of the Commissioner of Veterans Affairs, the Veterans Aid Commission and Commissioner of Higher Education relative thereto; providing that payments of such scholarships shall be made out of moneys in the Veterans Post War Rehabilitating Reserve Fund."

We note the title to the Act contains no statement relative to free tuition. It would appear the last sentence of section 37-20-01, concerning free tuition at educational institutions maintained by the State, was inserted for the purpose of distinguishing between institutions maintained by the State and Junior Colleges which are maintained by the school districts. Thus any person receiving a scholarship under the provisions of this Act would be admitted to the State maintained institutions without tuition; if such persons attended a junior college maintained by the school district, they would be required to pay tuition. Free tuition is thus dependent upon the awarding of a scholarship.

Insofar as residence is concerned, this office, in an opinion dated April 1, 1948, addressed to Mr. Floyd E. Henderson, Commissioner of Veterans' Affairs, stated: "You state further that you find no provision in chapter 156 to the effect that the benefits therein provided for are available to veterans who are residents of the State of North Dakota.

It is, of course, true that there is no such provision in chapter 156. However, we believe it is a legitimate presumption that the Legislature did not intend to provide for benefits for veterans who were not residents of the State of North Dakota at the time of their induction into the service, but rather that it was the intention of the Legislature to provide for children whose parents were veterans in World I or II and residents of the State of North Dakota.

It would thus appear the deceased parents of the children involved must have been residents of this State at the time of their induction into military service in order for the children to qualify for the scholarships under chapter 37-20 of the North Dakota Century Code. Since qualification for the scholarship is dependent, in part, upon the residence of the parents at the time of their induction into military service and since the Act is obviously classified as a "veteran benefits" program, we do not believe the residence of the student at the time of enrollment in the educational institutions is pertinent. The purpose of the Act is to provide benefits to World War I or II veterans who lost their lives in or as a result of such conflicts. The method used in this instance is the awarding of scholarships to their surviving children. Thus the residence of the child would not appear to be a factor.

In direct response to your questions:

1. It is our opinion the intent of chapter 37-20 of the North Dakota Century Code is that the children of deceased veterans be given free tuition only if a scholarship grant is made to the child under the provisions of chapter 37-20.
2. It is our opinion that the children of deceased veterans be granted free tuition in the State educational institutions only if a scholarship grant is made under the provisions of chapter 37-20.
3. It is our opinion that if the child is granted a scholarship under the provisions of chapter 37-20 of the North Dakota Century Code he must be admitted to the State educational institutions free of tuition. If a child receiving a scholarship enrolls in a Junior College operated by a school district he must pay such tuition.
4. It is our opinion that this Act applies only to the children of those veterans who, at the time of their induction into the military service, were residents of the State of North Dakota.
5. It is our opinion that this Act applies to all students who otherwise qualify under the provisions of the Act, regardless of whether such students were, at the time of their registration, nonresident students or become nonresident students at some time after their admittance to an institution.

HELGI JOHANNESON

Attorney General